MONTANA LEGISLATIVE HISTORY

Chapter 199 1985

Bill H _____ S 44 Original bill & history ↘ C

H. Committee on Tax			S. Committee on Tax		
Hearing Date(s)	3/13	↘ C	Hearing Date(s)	1/8	↘ C
		C			C
		C			C
		C		1/11	↘ C
Date Out	3/15	↘ C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

SENATE BILL NO. 44

INTRODUCED BY TOWE

BY REQUEST OF THE DEPARTMENT OF REVENUE
AND THE REVENUE OVERSIGHT COMMITTEE

IN THE SENATE

January 7, 1985	Introduced and referred to Committee on Taxation.
January 8, 1985	Fiscal Note requested.
January 11, 1985	Committee recommend bill do pass. Report adopted.
January 12, 1985	Bill printed and placed on members' desks.
	Fiscal Note returned.
January 14, 1985	Second reading, do pass.
January 15, 1985	Considered correctly engrossed.
January 16, 1985	Third reading, passed.
	Transmitted to House.

IN THE HOUSE

January 18, 1985	Introduced and referred to Committee on Taxation.
March 15, 1985	Committee report bill with no recommendation.
March 18, 1985	Second reading, concurred in.
March 20, 1985	Third reading, concurred in.
	Returned to Senate.

IN THE SENATE

March 20, 1985

Received from House.

Sent to enrolling.

Reported correctly enrolled.

SENATE BILL NO. 44

INTRODUCED BY TOWE

BY REQUEST OF THE DEPARTMENT OF REVENUE

AND THE REVENUE OVERSIGHT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE INCLUSION OF INTEREST INCOME FROM INSTALLMENT SALES OF REAL OR TANGIBLE BUSINESS PROPERTY LOCATED IN MONTANA IN A NONRESIDENT'S MONTANA ADJUSTED GROSS INCOME; AMENDING SECTION 15-30-131, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-30-131, MCA, is amended to read:

"15-30-131. Nonresident and temporary resident taxpayers -- adjusted gross income -- deductions. (1) In the case of a taxpayer other than a resident of this state, adjusted gross income includes the entire amount of adjusted gross income from sources within this state but shall not include income from annuities, interest on bank deposits, interest on bonds, notes, or other interest-bearing obligations, or dividends on stock of corporations except to the extent to which the same shall be a part of income from any business, trade, profession, or occupation carried on in this state. Interest income from installment sales of real or tangible commercial or business property located in Montana must be included in adjusted gross income. Adjusted gross income from sources within and without this state shall be allocated and apportioned under rules prescribed by the department.

(2) In the case of a taxpayer other than a resident of this state who is a resident of a state that imposes a tax on the income of natural persons residing within that state, the deductions allowed in computing net income are restricted to those directly connected with the production of Montana income.

(3) In the case of a taxpayer other than a resident of this state who is a resident of a state that does not impose a tax on the income of natural persons residing within that state, the deductions allowed in computing net income are restricted to the greater of those directly relating to the production of Montana income or a prorated amount of those allowed under 15-30-121. For the purposes of this subsection, deductions allowed under 15-30-121 apply only to earned income and must be prorated according to the ratio that the taxpayer's Montana earned income bears to his federal earned income.

(4) A temporary resident shall be allowed those deductions and the credit under 15-32-109 allowed a resident to the extent that such deductions or credit were actually

incurred or expended in the state of Montana during the course of his residency.

(5) For the purposes of this section, "earned income" shall be defined as the same term is defined in section 43 of the Internal Revenue Code, or as that section may subsequently be amended.

(6) Notwithstanding the provisions of subsections (2) and (3), any contribution made after December 31, 1982, to the state of Montana or a political subdivision thereof shall be an allowable deduction in computing net income. The deduction is subject to the limitations set forth in section 170 of the Internal Revenue Code of 1954, as labeled or amended.

(7) For purposes of this section, "installment sales" means sales in which the buyer agrees to pay the seller in one or more deferred installments."

NEW SECTION. Section 2. Extension of authority. Any existing authority of the department of revenue to make rules on the subject of the provisions of this act is extended to the provisions of this act.

NEW SECTION. Section 3. Effective date -- applicability date. This act is effective on passage and approval and applies to taxable years beginning after December 31, 1984.

-End-

REPORT LC04

MONTANA LEGISLATIVE ... BILL STATUS SYSTEM
FINAL COMMITTEE REPORT OF REFERRED BILLS
COMMITTEE--(S) TAXATION

RUN TIME 18:07
RUN DATE.... 04/29/85

CHAIRMAN--TOWE, TOM
SECRETARY-AAGENES, NANCY
NORMAL SCHEDULE==> SITE: ROOM 413/415 DAYS: M-TU-W-TH-F TIME: 8:00-10:00 A.M.

--BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES----------	COMMITTEE ACTION----------	REREFERRED TO COMM----	DATE OUT-
SB0042	1/07	1/08	1/12	PASS AS AMENDED		1/12
TOWE, THOMAS E.			INDIVIDUAL INCOME TAX NET OPERATING LOSS DEDUCTION			
SB0043	1/07	1/11	1/11 1/18 1/22	DO PASS		1/22
TOWE, THOMAS E.			SMALL BUSINESS CORP INCOME; INCLUDE IN MONT. INCOME PORTION THAT ESCAPES TAX			
SB0044	1/07	1/08		DO PASS		1/11
TOWE, THOMAS E.			INCOME TAX; NONRESIDENT INTEREST ON INSTALLMENT SALE OF BUSINESS PROPERTY			
SB0046	1/07	1/10		DO PASS		1/11
TOWE, THOMAS E.			RAISE TAX THRESHOLD FOR SPECIAL FUEL USERS QUARTERLY FILING WAIVER TO $200			
SB0047	1/07	1/08	1/12	PASS AS AMENDED		1/12
TOWE, THOMAS E.			CHANGE THE DEFINITION OF EARNED INCOME TO INCLUDE SUBCHAPTER S CORP. INCOME			
SB0048	1/10	1/15	1/15 1/16 1/17 1/19 1/22, 2/1, 2/2, 2/4, 2/6, 2/6	PASS AS AMENDED		2/6
TOWE, THOMAS E.			GEN. REVISE PROPERTY TAX CLASSIFICATION TO COMPLY WITH FED. LAW; 12 CLASSES			
SB0049	1/07	1/10	1/10 1/12 1/22	PASS AS AMENDED		1/22
BROWN, BOB			COLLECTION OF DELINQUENT TAXES AND OTHER FUNDS DUE THE STATE			
SB0051	1/07	1/10	1/10 1/12 1/22 1/23	PASS AS AMENDED		1/23
BROWN, BOB			INCREASING PENALTY FOR VIOLATION OF INCOME TAX LAW			
SB0052	1/08	1/24	1/25	TABLED		1/26
CRIPPEN, BRUCE D.			REVISING ALL-BEVERAGES LICENSE TRANSFERS AND CATERING PROVISIONS			
SB0053	1/08	1/24	1/25, 1/26	PASS AS AMENDED		1/26
CRIPPEN, BRUCE D.			WAIVER OF CATERING ENDORSEMENT AND SPECIAL PERMIT FILING REQUIREMENTS			
SB0055	1/07				JUDICIARY	/
TOWE, THOMAS E.			LIMITING TIME TO CHALLENGE VALIDITY OF COUNTY'S MINERAL INTEREST - TAX DEED			

vehicle fee.

Senator Goodover asked how it would operate differently from the status quo. Mr. Morrison said that there are no drastic changes, it would only make current practice understandable to new accountants and out-of-state accountants looking at Montana law. Senator Goodover asked about the effect of congressional changes in deductions of state tax from federal returns. Mr. Morrison said that the state would likely piggy-back federal changes.

Senator Mazurek begged leave to ask Clark Pyfer, present in the committee room, his opinion of the bill. Mr. Pyfer said he would trust Mr. Morrison's testimony and would applaud making Montana law correspond to the federal law.

Senator Towe said that the merit for the bill rested with enforcement power for the Department of Revenue.

Senator Goodover asked if the bill would increase taxes. Senator Towe responded that it would probably go both ways, depending on the individual case.

Senator Hager inquired about fiscal impact. Mr. Morrison said that would be difficult to determine. He said he didn't anticipate any as nothing would be done differently as a result of the bill. Mr. Pyfer concurred in that judgment.

The hearing was closed on SB 42.

CONSIDERATION OF SB 44: Senator Towe was recognized as chief sponsor of the bill, also introduced at the request of the Department of Revenue with the quick blessings of the Revenue Oversight Committee. The bill deals with interest income received by nonresidents from installment sales of business property, and makes that income subject to taxation in Montana. Mr. Morrison was recognized and said that the bill would only give statutory force to current policy.

PROPONENTS

There were no other proponents for SB 44.

OPPONENTS

There were no opponents to SB 44.

Questions from the committee were called for.

Senator Lybeck asked why there is a distinction between residential property and business property. Mr. Morrison said that the Department intent was only to follow existing

law and not expand on it. Senator Lybeck felt this was discriminatory. Mr. Morrison said an option to change the bill is available, but that the Department had only wanted to clarify an existing statute.

Senator Towe asked that the fiscal impact of making the bill applicable to all property be investigated.

Senator McCallum asked if a resident would be taxed in the same way. Mr. Morrison said, yes. Senator McCallum then asked if a non-resident would be taxed in his state of residency. Mr. Morrison explained that a tax credit would be given in the state where the income was not earned for taxes paid in the state where the income was generated.

Senator Goodover asked if this would inhibit out-of-state investors. Mr. Morrison explained that it was only a matter of where and not if the tax would be paid. Senator Towe said it might encourage people to sell and leave if the bill is not passed.

Senator Hager asked how it would affect a family sale. Mr. Morrison said that the nature of the transaction would not be relevant. Senator Towe pointed out that if the interest had to be imputed it could make a difference. Senator Hager asked about contracts before 1984 and Mr. Morrison said there would be no break in the interpretation of the policy.

Senator Goodover asked if the bill would remove the necessity of appeal and litigation and Mr. Morrison said it would.

The hearing was closed on SB 44.

CONSIDERATION OF SB 47: Senator Towe was recognized as chief sponsor of the bill which was introduced at the request of the Department of Revenue. The bill deals with changes in the definition of earned income to include subchapter S corporation elections in the determination of what is income in the state of Montana when it is earned by non-residents. Senator Towe deferred to Mr. Morrison from the Department of Revenue to discuss the bill. He explained that the way it is currently prorated some individuals could deduct 100 percent of their income here. This bill is more equitable in allocating those deductions.

PROPONENTS

There were no futher proponents for SB 47.

OPPONENTS

There were no opponents to SB 47.

MOTION: Senator Goodover moved that SB 44 do pass.

Senator Towe noted the suggestion of an attorney that the bill be clarified as not to be retroactive. He noted amendments which would accomplish that. It would leave current litigation untouched by the bill. Senator Towe noted also that Mr. Morrison opposed those amendments.

Senator Brown asked that consideration be held for a fiscal note.

Senator Goodover withdrew the motion that SB 44 do pass.

MOTION: Senator Goodover moved that SB 44 do not pass.

Discussion of the possible amendment continued. Mr. Morrison was recognized and said the Department did not view this as retroactive and that adopting such amendments could result in different treatment by the Department for similar cases.

Senator Lybeck said the tax should not be restricted to business property. Mr. Morrison suggest that would have to be done in a separate bill. Mr. Dan Bucks, Department of Revenue, said that different laws apply to taxation based on place of residency and place of business.

Senator Eck noted that if a person stayed in Montana he would have to pay. Senator Mazurek said if they did not pay here, they would pay to the state of new residence.

Senator McCallum asked if a fiscal note had been requested. Senator Towe said, yes. Mr. Morrison said he believed the fiscal note would indicate no impact. Senator McCallum asked now much projected revenue is being lost. Mr. Morrison said in excess of $913,000.

Senator Eck clarified that the bill is an enactment of current policy. She asked if rental properties were included as a business. Mr. Morrison said, yes.

Senator Goodover suggested that if the bill passed the Department of Revenue would not need so many auditors.

After other discussion regarding the difficulty in interpretations, the changes that would come as a result of a cash sale and the numbers of people affected, Senator Goodover withdrew the motion that SB 44 do not pass.

MOTION: Senator Eck moved that SB 44 do pass. Senator Towe called for the vote. With Senator Goodover voting no and all other members of the committee voting yes, the motion passed.

Senator Towe then called for further consideration of SB 41. He presented amendments that would do what the Economic Development

STANDING COMMITTEE REPORT

January 11 19 85

MR. PRESIDENT

We, your committee on Taxation

having had under consideration Senate Bill No. 44

First reading copy (White color)

Respectfully report as follows: That Senate Bill No. 44

DO PASS

DO NOT PASS

Senator Tom Towe, Chairman.

HOUSE TAXATION COMMITTEE

49th Legislature

ill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
B 229	Exempt mink under 11 months of age from taxation	1-17-85	Swift	1-30-85	DO NOT PASS, AS AMENDED	1-31-85
B 231	Exempt from taxation up to $3,600 of public retirement benefits paid by another state and increase exemption for private & corp. retirement benefits	1-17-85	Swift	1-29-85	TABLED 2-8-85	
B 240	To generally revise Montana property tax classification law	1-17-85	Ramirez	2-1-85	TABLED 3-28-85	
B 241	Provide for proration of property tax on mobile home when it is moved	1-17-85	Kadas	1-28-85	DO PASS, AS AMENDED	1-29-85
B 250	Establishing a method for determining tax rate applicable to centrally assessed property defining "commercial"	1-18-85	Ramirez	2-1-85	TABLED 3-28-85	
B 44	Clarifying the inclusion of interest income from installment sales of real business property in non-resident's adjusted gross income	1-18-85	Towe	3-13-85	WITHOUT RECOMMENDATION 3-15-85	

orm CS-32
-81

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

March 13, 1985

The fortieth meeting of the Taxation Committee was called to order in room 312-1 of the state capitol at 8:06 a.m. by Chairman Gerry Devlin.

ROLL CALL: All members were present with the exception of Representative Iverson. Also present were Dave Bohyer, Researcher for the Legislative Council, and Alice Omang, secretary.

CONSIDERATION OF SENATE BILL 44: Senator Towe stated that this bill was requested by the Department of Revenue with the blessings of the Revenue Oversight Committee. He indicated that this deals with an area of the law that is unclear and there has been some litigation over this. He explained that if a nonresident earns income in Montana, he has to pay taxes on it or if a nonresident runs a business in Montana, he has to pay taxes on it. He informed the committee that the question is what happens when a nonresident sells the business - does he pay taxes on the capital gains and on the interest. He concluded, saying that this bill clarifies that and makes it clear that the interest is to be taxed.

PROPONENTS: Ken Morrison, representing the Department of Revenue, emphasized that this bill is talking about a tax and this would be the same type of tax that is paid by the residents of Montana.

There were no further proponents.

OPPONENTS: David Johnson, a lawyer residing in Billings, gave testimony in opposition to this bill. See Exhibit 1.

There were no further opponents.

QUESTIONS ON SENATE BILL 44: Representative Cohen asked Mr. Johnson who his client was; and he responded it was an individual from Texas by the name of Mr. Fulberton.

Representative Cohen asked if the sale price of a business is not often dependent upon the terms.

Mr. Johnson responded that it can be; however, there are now significant and strong rules from the Internal Revenue Service which require the establishment of a minimal rate of interest, so the gains the taxpayer has by increasing the selling price and decreasing the interest rate are no longer available. He continued even if that were to occur, that would benefit the state of Montana because an increase in the selling price would create a greater capital gain and that clearly is taxable in Montana.

Representative Sands noted that in Mr. Johnson's testimony he referred to a Department of Revenue regulation, which said, "Interest received on deferred payments of the selling price of property situated in Montana is allocable to the state of the nonresident's commercial domicile." He asked if this bill does not change that.

Mr. Morrison responded that that is a section of rules that apply to residents who are operating businesses in two states and are subject to the allocation of income as well as the corporation tax and he does not think it does. He continued that they have another rule that applies in this particular case.

Representative Ellison asked if they have been collecting taxes on the interest on these installment contracts in the past.

Mr. Morrison answered that they have been and there are many taxpayers who have been filing according to their interpretation all along.

Representative Ellison inquired as to how long the statute has been on the books; and Mr. Morrison replied that it has been more than ten years.

Representative Sands asked Mr. Johnson about Mr. Morrison's referral to the Department of Revenue's regulation.

Mr. Johnson answered that this is the same story he has been hearing for the last 2½ years and he quoted this right

from the regulation and in all the informal conferences they had with the department, they ignored this regulation and never explained why it is inconsistent and he does not understand where they are coming from and this regulation does apply.

Representative Sands indicated that this regulation applies to businesses that operate in two different states and this just allocates income between the two different states.

Mr. Johnson explained that he does not interpret it that way and that it does not have any reference to operating in two different states, but he thought that they may have amended it or are in the process of amending it.

Representative Cohen questioned if there were any other people who are appealing the department's interpretation.

Mr. Morrison replied that there may be one other case, but they have had several audits in this area and the majority of the taxpayers have interpreted the law the same way they did.

Chairman Devlin asked what kind of a loss this might be and Mr. Johnson informed him that the potential loss is about $1½ million, so there must be more taxpayers out there reporting that interest income because his client certainly does not owe that kind of money.

Chairman Devlin asked if they failed to pass this, would they just go into litigation with each and every one of these.

Mr. Morrison responded that if they did not pass this bill, they still have their interpretation of the existing statute and he was sure that Mr. Johnson's client would take a close look at that and consider that a statement of intent and whether there would be litigation on all the other taxpayers, he contended that he would doubt that.

Representative Switzer asked Mr. Johnson if he knew of any other taxpayers who are protesting and Mr. Johnson responded that those figures have not been revealed to him by the department but he did have a conversation with

another person in the department once, who told him that there were numerous people who were paying and there were people who were not paying. He continued that the only one he was aware of was an attorney in Colorado, who was representing a client and he (Mr. Johnson) had been exchanging information on this issue.

Representative Abrams asked if he would be clobbered with two taxes if he sold a business in Montana, moved down to Wyoming and he had interest income.

Mr. Johnson answered that that is possible and it depends on the relationship of the credit statutes in each taxing state. He explained that he may be entitled to a credit in his resident state or vice versa.

Chairman Devlin asked if they were operating under these rules right now that are stated in the handout.

Mr. Morrison replied that they have a rule that indicates that interest income falls under our interpretation of an installment contract and is subject to Montana income tax. He said that he thought this rule in this handout was a rule that is contained in their rule section involving a portion of the income for taxpayers operating a business in another state.

Chairman Devlin exclaimed that the rule doesn't say that and he asked him to furnish the committee with the rest of the rule.

Mr. Johnson advised that he thought he was referring to the taxation of a corporate enterprise operating in other states.

There were no further questions.

Senator Towe concluded that they are talking about the issue of whether or not this interest income is income from a source within the state and it obviously relates to the sale of a Montana business and it is income from a source within the state. If they do not want to do it that way, he continued, then they should say, "after interest on bank deposits""interest on contracts for the sales of Montana businesses".

The hearing on this bill was closed.

CONSIDERATION OF SENATE BILL 46: Senator Towe said that this bill raises an exemption so that more people are exempt and any person who has a special user fee in excess of $100.00 a year must pay quarterly, and because of inflation, they are proposing to increase the exemption to $200.00.

Norris Nichols, Administrator of the Motor Fuel Tax Division of the Department of Revenue, advised the committee of what this bill would do.

PROPONENTS: Jo Brunner, representing the Montana Cattlemen's Association, offered testimony in support of this bill. See Exhibit 2.

There were no further proponents.

OPPONENTS: There were none.

QUESTIONS ON SENATE BILL 46: Representative Patterson indicated that the committee had HB 151, which basically did the same thing. Chairman Devlin informed him that that bill was tabled in this committee - it was originally passed out of this committee and the sponsor sent it back to the committee because there was a problem with the bonding.

There were no further questions and Senator Towe closed. Chairman Devlin closed the hearing on this bill.

EXECUTIVE SESSION:

DISPOSITION OF SENATE BILL 46: Representative Switzer moved that this bill BE CONCURRED IN. Chairman Devlin stated that Mr. Nichols was going to do some checking on this so Representative Switzer withdrew his motion.

CONSIDERATION OF HOUSE BILL 908: Representative Keenan, District 66, stated that this bill was not at the request of the Department of Revenue, and the Montana corporate tax rate is presently at 6 3/4% of net income. She informed the committee that allowable deductions include all ordinary and necessary business expenses, certain losses and depreciation of assets, resource depletion allowance, interest paid on business debts, certain

Exhibit 1
SB 44
3/13/85
David Johnson

Summary of Testimony of David L. Johnson Before the House Taxation Committee

on

SENATE BILL 44

A. Current Law

Section 15-30-131(1), MCA, describes the items to be included in the adjusted gross income of a nonresident, and provides that a nonresident is to report to the State of Montana all income from sources within Montana. The statute then provides that income from sources within Montana shall not include:

> "income from . . . interest on bank deposits, interest on bonds, notes, or other interest-bearing obligations . . . except to the extent to which the same shall be a part of income from any business, trade, profession, or occupation carried on in" Montana.

The Department of Revenue has issued several regulations under §15-30-131, one of which applies to interest on deferred payment sales. ARM §42.16.114(2) provides:

> "Interest received on deferred payments of the selling price of property situated in Montana is allocable to the state of the nonresident's commercial domicile."

B. Proposed Change

Senate Bill 44, which was introduced at the request of the Department of Revenue, and which proports to be an Act "clarifying" the inclusion of interest income from installment sales of Montana property by a nonresident, adds the following sentence:

> "Interest income from installment sales of real or tangible commercial or business property located in Montana must be included in adjusted gross income."

After defining the term "installment sales" as a sale in which the buyer agrees to pay the seller in one or more deferred installments, the Bill concludes by providing that the Act, if adopted, would become effective on passage and would apply to "taxable years beginning after December 31, 1984."

C. Possible Retroactive Effect of the Bill

1. S.B. 44, since it states that it is an Act "clarifying" the inclusion of interest income, could be construed as evidencing a Legislative intent that the existing statute taxes such income.

2. If so construed, the Bill would negatively impact taxpayers with deficiency cases presently pending before the Department of Revenue.

3. Moreover, since the Bill would apply to "taxable years beginning after December 31, 1984," interest income on deferred payment sales which occurred prior to that date would be subject to tax, even though the sellers would not contractually be able to modify their contracts to receive cash.

D. Policy Considerations

1. The Bill discriminates between nonresidents (and residents who thereafter become nonresidents) on the basis of whether they sell their business for cash or on a deferred payment contract.

   a. If the sale is for cash, and the funds are deposited with a Montana bank, that interest is not taxable to a nonresident.

2. Similar interest income is not subjected to tax in at least two other states, New York and Colorado.

3. Expansion of our taxation statute could discourage capital investments in Montana.

E. Conclusion

1. Senate Bill 44 should be killed.

2. If not, two amendments are necessary to prevent its possible retroactive effect:

   a. The Title of the Bill should be modified to read "An Act to include interest income" rather than "An act clarifying the inclusion of interest income".

   b. The Bill's applicability date should be modified to provide that it applies only to installment sales occurring after December 31, 1984.

Respectfully submitted,

David L. Johnson

David L. Johnson
490 N. 31st Street
Billings, Montana

March 13, 1985

CONSIDERATION OF SENATE BILL 43: Representative Switzer made a motion that Senate Bill 43 BE NOT CONCURRED IN.

Representative Sands provided committee members with copies of information from the Department of Revenue (Exhibit 3). He said the bill is good in concept as it deals with those situations where a business entity might change from full corporation to Subchapter S status, in order to gain more favorable treatment under capital gains regulations. He said the federal government states that capital gains can be taxed at a lower rate under Subchapter S status and disallows such action, while Montana does not. Representative Sands stated the bill would correct this situation.

Representative Williams made a substitute motion that Senate Bill 43 BE CONCURRED IN. The motion passed with Representatives Switzer, Devlin, Asay and Zabrocki voting no, and all other members of the Committee voting aye, except Representatives Harp and Patterson, who were excused.

Chairman Devlin requested that Representative Sands carry Senate Bill 43, Representative Harrington carry Senate Bill 99, and Representative Cohen carry Senate Bill 41.

CONSIDERATION OF SENATE BILL 44: Mr. David Bohyer, Legislative Researcher, referred to a statement made by Mr. Dave Johnson, Billings, during the hearing of Senate Bill 44, which pertained to section 42.6.1102, MCA, and administrative rules for subsection 2, which pertain to interest received on deferred payments. He said the correct section is 42.16.1113(3), MCA, which clears up confusing testimony presented by Mr. Johnson and the Department of Revenue.

Representative Switzer said he thought the bill was an attempt to follow contracts "all over the country" to collect on the Montana portion of the income received and that he believes Montana sold its interest when the property was sold.

Representative Williams said the State is only trying to collect taxes on income made in Montana when the transaction is completed in Montana. He said the underlying language at the bottom of page 2 and the top of page 3 of the bill is quite clear.

Representative Switzer asked if Montana income tax would be paid on property owned and sold in Wyoming, when the owner resides in Montana. Mr. Bohyer replied that taxes paid in Montana are deducted from income taxed by other states and that it should be the same in reverse. He commented that as Wyoming has no state income tax, the only tax paid would be in Montana, in this instance.

Representative Asay, referring to line 18, on page 1 of the bill, said it appears that interest from a source other than a sale of property would not be included in the bill. Mr. Bohyer replied this was correct as interest on deposits is not included.

Chairman Devlin asked why deposits were exempted while sales of property were not. Representative Asay commented that he agreed with Chairman Devlin.

Representative Ream advised committee members that line 22 provides an exception and asked Mr. Bohyer to explain the top portion of page 2, concerning reciprocity agreements between states. Mr. Bohyer replied there are about five different rules which pertain to this situation and, in his opinion, Department of Revenue rules already deal with the situation addressed in the bill.

Representative Zabrocki asked how the Department would become aware of such sales. Representative Ellison commented that when an individual is receiving interest income, the government knows. Representative Switzer added that a realty transfer certificate leaves a clear trail.

Representative Williams made a motion that Senate Bill 44 BE CONCURRED IN.

Representative Gilbert asked how an individual would be taxed if there were no reciprocal agreement between states. Mr. Bohyer replied the potential is there for double taxation if no reciprocal agreement exists.

Representative Keenan stated she was concerned that such income would go untaxed if neither Montana nor another eligible state collected taxes due. She commented the major concern of the bill is to obtain income due the State of Montana.

Chairman Devlin told committee members he was concerned with how the Department of Revenue can utilize different rules for income from deposits. Representative Williams commented most of this income is already subject to taxation.

Representative Switzer stated he believed the same property would continue to pay taxes in Montana even if it were located and sold in Wyoming, when the seller resided in Montana. Representative Williams advised Representative Switzer that lines 22,23 and 24, on page 1 of the bill, create exceptions for business, trades or professions.

Representative Switzer made a substitute motion that Senate Bill 44 BE NOT CONCURRED IN.

Chairman Devlin, referring to Representative Williams' statement, said that portion of the bill speaks to income and doesn't address interest. Representative Gilbert explained the bill states no Montana tax is to be paid on deposits if the depositor resides outside the State, but does apply to the sale of real property, which he believes to be discriminatory.

Mr. Ken Morrison, Administrator, Income Tax Division, Department of Revenue, told the Committee the bill does not apply to residential property sold, but interest earned on business property installment sales.

Representatives Zabrocki and Koehnke both commented that if the owner moved for example, to Arizona, double taxation could still take place. Mr. Morrison replied that Montana would allow a credit for taxes paid in another state.

Representative Williams commented there would be no double taxation if Montana did allow such a tax credit. Representative Hansen advised Representatives Zabrocki and Koehnke that when an individual goes from Montana, he or she can file a non-resident return from Montana.

Representative Sands, referring to section 42.16.1142, MCA, asked if the section would address property owned and sold in another state. Mr. Morrison replied his division gave incorrect information during the hearing of Senate Bill 44 and told the Committee section 42.16.1113(3), MCA, provides clarification of the matter. Representative Sands stated he was still concerned that (3) of the section presents a conflicting interpretation.

The motion made by Representative Switzer that Senate Bill 44 BE NOT CONCURRED IN resulted in a tie vote (Roll Call vote attached). The Committee resorted to the original motion made by Representative Williams that Senate Bill 44 BE CONCURRED IN and Chairman Devlin announced that bill would go to the House floor without recommendation.

There being no further business before the Committee, the meeting was adjourned at 10:55 a.m.

Representative Gerry Devlin, Chairman